S.B.CIVIL WRIT PETITION NO.1573/1995

Jagmohan Kumar
v.
State of Rajasthan & Anr.

DATE OF ORDER :: 28th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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By this petition for writ a direction for respondents is claimed by the petitioner to promote him as Executive Engineer (Civil) from the date persons junior to him in the cadre of Assistant Engineers (Civil) were promoted.

In brief, facts of the case are that the petitioner entered in the services of the respondents being appointed as Junior Engineer (Civil) in the year 1966. An appointment was given to him as Assistant Engineer on 28.2.1978 as a consequent to his direct recruitment on the post concerned through Rajasthan Public Service Commission. In the seniority list published by the respondents relating to the cadre of Assistant Engineers (Civil) dated 6.2.1992 name of the petitioner was shown at Serial No.164. The respondents in accordance with the Rajasthan Service of Engineers (Buildings and Roads Branch) Rules, 1954 (hereinafter referred to as “the Rules of 1954”) made promotions of

Assistant Engineers (Civil) as Executive Engineers (Civil) against the vacancies for the year 1993-94 under an order dated 7.2.1994. By the order aforesaid the respondents promoted few of the persons junior than the petitioner including Shri B.V.Soni whose name was at Serial No.186 in the seniority list dated 6.2.1992. The respondents also made promotions to the post of Executive Engineers (Civil) against the vacancies pertaining to the year 1994-95 but this time too promotion was not given to the petitioner as he was facing a disciplinary proceeding under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958. Being aggrieved by the supercession as stated above, this petition for writ is preferred.

A promotion has already been given to the petitioner as Executive Engineer (Civil) against the vacancies of the year 1994-95 by restoring his seniority position between the names of Shri R.N.Bajaj and Shri K.C.Bohra, therefore, no grievance now survives relating to his supercession in the year 1994-95. The writ petition, thus, is confined to the grievance relating to supercession in the year 1993-94 only.

The contention of counsel for the petitioner is that under the Rules of 1954 the criteria for promotion to the post of Executive Engineer (Civil) is

seniority-cum-merit and merit with the ratio of 1:1, therefore, the respondents while considering candidature of the petitioner under the criteria of seniority-cum-merit should not have compared merits of the persons coming within the zone of consideration. It is asserted by counsel for the petitioner that there was nothing adverse to the petitioner on the basis of that promotion could have been denied to him.

In reply to the writ petition the stand of the respondents is that candidature of the petitioner was considered by the Departmental Promotion Committee that met on 26.6.1993 wherein the petitioner was not found suitable to be promoted, as he suffered a minor punishment i.e. of stoppage of one annual grade increment without cumulative effect under an order dated 27.5.1978.

This Court by an order dated 13.2.2007 directed the respondents to make available minutes of the Departmental Promotion Committee that considered candidature of the petitioner for promotion to the post of Executive Engineer (Civil) for the year 1993-94, accordingly, the same is shown to me. From perusal of the minutes of the Departmental Promotion Committee that met on 26.6.1993, it reveals that candidature of the petitioner was considered for the purpose of promotion but he was not found suitable. The Departmental Promotion Committee while not finding the

petitioner suitable for promotion has not given any reason. The reason for not giving promotion to the petitioner is prescribed in reply to the writ petition filed by the respondents and i.e. the penalty imposed upon the petitioner under order dated 27.5.1978.

Heard counsel for the parties.

It is not in dispute that the criteria for promotion in the case in hand is seniority-cum-merit. From perusal of record it reveals that the Departmental Promotion Committee that met on 26.6.1993 has not given any reason for not fiunding the petitioner suitable for promotion to the post of Executive Engineer (Civil). It also does not reveal that what material was produced before the committee and how that was considered. It is always expected from a Departmental Promotion Committee to record reasons while superseding a person or holding him not suitable for promotion for next higher post.

This Court in the case of Satyamani Tiwari v. State of Rajasthan & Ors., SBCivil Writ Petition No.2878/2003, decided on 11.8.2006, held as under:-

> "The Departmental Promotion Committee was required to see the entire service record including the annual confidential reports/annual performance appraisal reports, awards/commendation certificates, entries

> relating to punishments or pending departmental enquiries etc. and then by analysis of the same an objective remark in relation to suitability was required to be made. The Departmental Promotion Committee should have recorded that how the misconduct for that the petitioner was penalised by a minor penalty effected his efficiency to the extent that he is not suitable to be promoted to Rajasthan Police Service. While doing so the committee must keep in mind that under the criteria of seniority-cum-merit it is the seniority that will prevail as the term "merit" under the criteria concerned means the minimum merit necessary for efficiency of administration."

In the instant matter too the Departmental Promotion Committee has simply mentioned that the petitioner was not found suitable for promotion. No reason or remark for reaching such conclusion is given. Thus, in view of the law laid down by this Court in the case of Satyamani Tiwari (supra) the manner in which candidature of the petitioner was considered for promotion to the post of Executive Engineer (Civil) against the vacancies of the year 1993-94 is unjust and, therefore, is illegal.

I also found the denial for promotion to the post of Executive Engineer (Civil) to the petitioner against the vacancies of the year 1993-94 illegal on the count that a minor penalty imposed upon the petitioner under an order dated 27.5.1978 was taken

into consideration. The order imposing penalty is available on record as Anx.14. The penalty was relating to an incident of the year 1969-70 when the petitioner was holding the post of Junior Engineer (Civil). As stated above, the petitioner after appointment to the post of Junior Engineer was employed as Assistant Engineer by way of direct recruitment. A penalty that was imposed upon the petitioner for an act relating to earlier service could have not been taken into consideration by the Departmental Promotion Committee while considering candidature of the petitioner to the post of Executive Engineer (Civil) from the post of Assistant Engineer (Civil).

In view of whatever discussed above, this petition for writ deserves acceptance. The same, therefore, is allowed. The respondents are directed to consider candidature of the petitioner afresh for the purpose of promotion to the post of Executive Engineer (Civil) against the vacancies of the year 1993-94. The respondents while doing so shall not consider the minor penalty imposed upon the petitioner under the order dated 27.5.1978.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.